

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

CR 11-27-GF-BMM-01

Plaintiff,

vs.

CHAREYA RITA MARY DENNY,

**FINDINGS AND
RECOMMENDATIONS TO
REVOKE DEFENDANT'S
SUPERVISED RELEASE**

Defendant.

I. Synopsis

The United States accused Ms. Denny of violating her conditions of supervised release by submitting a urine sample that tested positive for alcohol, providing a breath sample that tested positive for alcohol, attempting to defeat the urinalysis testing program, failing to report for urinalysis testing on several occasions, providing a urine sample that tested positive for methamphetamine, and failing to attend substance abuse treatment group sessions. Ms. Denny admitted to the violations. The district court should revoke Ms. Denny's supervised release and sentence her to eight months of custody, with ten months of supervised release to follow, to include mental health treatment.

II. Status

In June 2011, Ms. Denny pleaded guilty to Possession with Intent to Distribute and Distribution of Methamphetamine. (Doc. 34.) She was sentenced to 45 months of custody, followed by three years of supervised release. (Doc. 38.) Ms. Denny's first period of supervised release began on August 30, 2013. (Doc. 44.) In October 2013, Chief United States District Court Judge Dana L. Christensen modified the conditions of Ms. Denny's release by requiring her to participate in substance abuse testing and substance abuse treatment and by prohibiting her from consuming toxic substances. (Doc. 43.) Ms. Denny's supervised release was revoked in August 2015 because she violated her conditions by using methamphetamine and marijuana. United States District Court Judge Brian Morris sentenced Ms. Denny one day of custody with credit for time served and 24 months of supervised release. (Doc. 50.) Ms. Denny's second period of supervised release began in August 2015.

In December 2015, Judge Morris again revoked Ms. Denny's supervised release because she failed to participate in substance abuse treatment and failed to notify her probation officer of a change in her address. Judge Morris sentenced her to six months in custody followed by eighteen months of supervised release. (Doc. 62.) Ms. Denny's current term of supervised release began on May 13, 2015.

Petition

On September 26, 2016, the United States Probation Office filed a petition asking the Court to revoke Ms. Denny's supervised release. (Doc. 64.) Based on the petition, Judge Morris issued a warrant for Ms. Denny's arrest. (Doc. 65.) The Probation Office accused Ms. Denny of violating the conditions of her supervised release by submitting a urine sample that tested positive for alcohol, providing a breath sample that tested positive for alcohol, attempting to defeat the urinalysis testing program, failing to report for urinalysis testing on several occasions, providing a urine sample that tested positive for methamphetamine, and failing to attend substance abuse treatment group sessions. (Doc. 64.)

Initial appearance

On October 25, 2016, Ms. Denny appeared before the undersigned in Great Falls, Montana, for an initial appearance. Federal Defender Evangelo Arvanetes accompanied her at the initial appearance. Assistant United States Attorney Chad Spraker represented the United States.

Ms. Denny said she had read the petition and understood the allegations. Ms. Denny waived the preliminary hearing, and the parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

Ms. Denny admitted that she violated the conditions of her supervised release. The violations are serious and warrant revocation of Ms. Denny's supervised release.

Ms. Denny's violation grade is Grade C, her criminal history category is I, and her underlying offense is a Class C felony. Ms. Denny could be incarcerated for up to 24 months, and she could be ordered to remain on supervised release for 29 months, less any custody time imposed. The United States Sentencing Guidelines call for three to nine months in custody.

The Court continued the sentencing phase of Ms. Denny's revocation hearing until November 21, 2016. On that date, Ms. Denny appeared before the undersigned. Evangelo Arvanetes represented her. Assistant United States Attorney Bryan Dake represented the United States. Mr. Arvanetes recommended a six month sentence with supervised release to follow. Mr. Dake recommended a sentence of eight months in custody and supervised release to follow, to include mental health treatment. Ms. Denny addressed the Court and acknowledged she is an addict. She apologized for her actions and said she hopes she will be successful this time.

III. Analysis

The district court should revoke Ms. Denny's supervised release because she admitted violating its conditions. Ms. Denny should be sentenced to a sentence of eight months, with ten months of supervised release to follow to include mental health treatment. This sentence would be sufficient given the serious violation of the Court's trust, but it would not be greater than necessary.

IV. Conclusion

Ms. Denny was advised that the above sentence would be recommended to Judge Morris. The Court reminded her of her right to object to these Findings and Recommendations within 14 days of their issuance. The undersigned explained that Judge Morris would consider Ms. Denny's objection, if it is filed within the allotted time, before making a final determination on whether to revoke Ms. Denny's supervised release and what, if any, sanction to impose.

The undersigned **FINDS:**

Chareya Rita Mary Denny violated the conditions of her supervised release by submitting a urine sample that tested positive for alcohol, providing a breath sample that tested positive for alcohol, attempting to defeat the urinalysis testing program, failing to report for urinalysis testing on several occasions, providing a urine sample that tested positive for methamphetamine, and failing to attend substance abuse treatment group sessions.

The undersigned **RECOMMENDS:**

The district court should enter the attached Judgment, revoking Chareya Rita Mary Denny's supervised release and sentencing Ms. Denny to eight months of custody followed by ten months of supervised release to include mental health treatment.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive the right to appear and allocute before a district judge.

Dated the 7th day of December 2016.


John Johnston
United States Magistrate Judge